In the High Court of Judicature at Madras

Dated: 05/12/2003

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The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No.936 of 1996
and
WPMP.No.1492 of 1996

M/s. Coastal Packers Private Ltd.,
A.6-B SIPCOT Complex
Cuddalore 607 003. .. Petitioner

-Vs-

1. Government of Tamil Nadu
rep. by the Secretary to
Government, Industries Department
Fort St. George
Madras 600 009.

2. The Tamil Nadu Industrially
Investment Corporation Ltd., (TIIC)
through its Managing Director
"Arul Manai" No.27 Whites Road
Madras 600 014.

3. The Manager
Tamil Nadu Industrial Investment
Corporation Ltd.,
1 Bharathi Road
Arcot Woodlands (Annexe) 3rd Floor
Cuddalore 607 001. .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of writ of certiorarified mandamus as stated therein.

For petitioner : Mr. P. Srinivas

For respondents: Mr. S. Venkatesh
Addl. Govt., Pleader for R.1
Mr. P.S. Seetharaman for R.2 & 3

:ORDER

The petitioner challenges the letter dated 28.07.1995, issued
by the Department of Industries, Government of Tamil Nadu - first respondent

herein, rejecting their request for sales tax waiver. The petitioner has also prayed for a direction to the respondents to issue eligibility certificate to the effect that the petitioner Factory is eligible for total waiver of sales tax with effect from 08.03.1994 under the Incentive Schemes notified by the State Government.

2. The case of the petitioner is briefly stated hereunder:
The petitioner Company availed a loan of Rs.27.40 lakhs from the second respondent - State Financial Corporation. The second respondent sanctioned a loan on 06.11.1992 and even after sanction, there was considerable delay in the disbursement of the loan amount. By G.O.Ms.No.305 Industries (MIG-2) Department dated 22.05.1989, the first respondent, while reviewing the working of the interest-free sales tax loan Scheme and in suppression of the earlier Government Orders, notified that new Units other than those specifically included in the said notification located in the Backward Taluks will be eligible for various concessions, the interest-free sales tax loan scheme upto a particular limit as per the stipulations contained therein. In G.O.Ms. No.423 (Industries - MIG 2) Department dated 07.07.1989, the Government declared 105 taluks in the State as industrially backward for the purpose of grant of concession like power tariff concession, interest-free sales tax, State Capital subsidy and special subsidy for industries with effect from 22.05.1989. The same was liberalised in G.O. Ms.No.563 (Industries SIC 2) Department dated 19.08.1989. In G.O.Ms. No.564 (Industries SIC) Department dated 19.08.1989, the Government extended the incentives for expansion or for diversification of the existing Units.

3. In G.O.Ms.No.500 (Industries MIG II) Department dated 14.05.1990 , the Government liberalised the Incentive Scheme for Industries and directed that new industries to be set up in 30 most backward Taluks and three industrial complexes of State Industries Promotion Corporation of Tamil Nadu (SIPCOT), namely, Cuddalore, Manamadurai and Pudukottai. Apart from other existing concessions, they will have full waiver of sales tax due for a period of five years upto a ceiling of total investment made in fixed assets. The petitioner, a Small Scale and New Industry located in Cuddalore SIPCOT complex is entitled to avail the benefits notified by the first respondent in G.O.Ms.No.500 (Industries MIG II) Department dated 14.05.1990, in addition to other benefits which the petitioner is eligible to avail. In terms of the said notification, new Units will be entitled to waiver of sales tax, besides other incentives. The petitioner Company satisfies the stipulations set out in the Government Order and is eligible for total waiver of sales tax for a period of five years from the date of its commercial production. The petitioner Company submitted an application to respondents 2 and 3 for issuance of eligibility certificate for waiver of sales tax in the prescribed form. Instead of granting total waiver of sales tax, the third respondent had issued an eligibility certificate in favour of the petitioner to the effect that the petitioner industry is entitled to pay sales tax under the sales tax deferral scheme for a period of nine years from 23.02.1994 to 22.02.2003. Even the subsequent representation of the petitioner was not acceded to, hence the present writ petition.

4. The respondents 2 and 3 have filed a counter affidavit,

wherein it is stated that the petitioner Company was sanctioned a loan of Rs.27.40 lakhs on 11.11.1992 for the purpose of establishment of an industry at SIPCOT Industrial Complex, Cuddalore. The petitioner after availing a sum of Rs.24.32 lakhs out of the loan sanctioned, started its commercial production and the petitioner claimed concession in payment of sales tax. The respondents issued the eligibility certificate as authorised by the Government of Tamil Nadu under deferral scheme. The first respondent in the impugned letter dated 28.07.1995 stated that the industrial units which commenced commercial production after 10.08.1993, were eligible for concessions as applicable to backward Taluks under sales tax deferral scheme only. Since the petitioner industry commenced its commercial production on 08.03.1994, it was eligible for concession under sales tax deferral scheme. There was no delay on the part of the second and third respondents in disbursing the loan amount.

5. In the light of the above pleadings, I have heard Mr. P. Srinivas, learned counsel for the petitioner, Mr. S. Venkatesh, learned Additional Government Pleader for the first respondent and Mr. P.S. Sethuraman, learned counsel for respondents 2 and 3.

6. The only point for consideration in this writ petition is, whether the petitioner industry is entitled total waiver of sales tax, as claimed?

7. There is no dispute that based on various Government Orders, the petitioner started its factory at SIPCOT complex, Cuddalore for the manufacture of corrugated boxes and boards. Though the petitioner is entitled certain concession in payment of sales tax, a perusal of various Government Orders referred to in the affidavit as well as filed in the typed set of papers show that the petitioner cannot claim total waiver of sales tax. There is no dispute with regard to the fact that the petitioner is a small scale and new industry located in Cuddalore SIPCOT complex, entitled to avail the benefits notified by the first respondent in G.O.500 Industries (MIG II) Department dated 1 4.05.1990. Admittedly, the petitioner Unit commenced its commercial production on 08.03.1994, i.e., after the cut off date, viz., 10.08.1 993, in which case the petitioner and other similarly placed persons are eligible for concessions as applicable to backward taluks under sales tax deferral scheme.

8. As a matter of fact, when the petitioner applied for eligibility certificate, after considering various Government Orders applicable, eligibility certificate under sales tax deferral scheme for a period of nine years i.e., from 23.02.1994 to 22.02.2003 had been issued in the letter dated 13.03.1995. Though the petitioner was aware of this fact and after knowing the same, they prayed for full waiver as a special case, which was negatived in the impugned letter dated 28.07.1 995. Inasmuch as the petitioner industry commenced its commercial production after 10.08.1993, I am satisfied that as per various clauses in the Government Orders and the clarification issued, the petitioner is eligible for concession as applicable to backward taluks, i.e., sales tax deferral concession. In the light of the fact that the petitioner company commenced their commercial production only on 08.03.1994, i.e., after the cut of date, they are eligible for sales tax

deferral concession only and the respondents are fully justified in rejecting the request of the petitioner for sales tax waiver benefit as claimed. As stated earlier, in the light of the various clauses in the Government Orders applicable to the petitioner and of the fact that the petitioner commenced its commercial production after 10.08.1993 , the petitioner was granted sales tax deferral concession for a period of nine years is in accordance with the Government Orders. Though the petitioner has claimed total sales tax waiver for a period of five years, the first respondent has granted deferral in sales tax for a period of nine years, which cannot be faulted with.

In the light of what is stated above, I do not find any merit in the claim made by the petitioner. Consequently, the writ petition fails and the same is dismissed. No costs. Connected WPMP., is also dismissed.

Index:Yes
Internet:Yes

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To

1. The Secretary to Government,
Government of Tamil Nadu
Industries Department
Fort St. George
Madras 600 009.

2. The Managing Director
Tamil Nadu Industrially
Investment Corporation Ltd., (TIIC)
"Arul Manai" No.27 Whites Road
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